

United States Court of Appeals
For the Eighth Circuit

No. 15-2217

Curtiss-Manes-Schulte, Inc.

Plaintiff - Appellant

v.

Safeco Insurance Company of America

Defendant - Appellee

Appeal from United States District Court
for the Western District of Missouri - Jefferson City

Submitted: January 22, 2016

Filed: February 9, 2016

[Unpublished]

Before LOKEN, MURPHY, and BYE, Circuit Judges.

PER CURIAM.

Curtiss-Manes-Schulte, Inc. appeals the district court's¹ adverse grant of summary judgment in its diversity action. Upon de novo review of the summary

¹The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri.

judgment record and the district court's interpretation of the construction performance bond and subcontract, see Bremer Bank v. John Hancock Life Ins. Co., 601 F.3d 824, 829 (8th Cir. 2010), and careful consideration of Curtiss-Manes-Schulte, Inc.'s arguments for reversal,² we conclude that summary judgment was warranted. Specifically, we agree with the district court that because the record showed the default-declaration requirement in the performance bond was not met, Safeco Insurance Company of America's obligations under the bond were not triggered. See Miller-Stauch Constr. Co. v. Williams-Bungart Elec., Inc., 959 S.W. 2d 490, 494 (Mo. Ct. App. 1998) (under performance bond where subcontractor is principal and general contractor is obligee, surety has option of formally taking over project and contract for its completion, or allowing project to be defaulted and letting general contractor complete or contract for completion of project, in which case surety is responsible for costs in excess of contract price). The judgment of the district court is affirmed.

²We decline to consider matters raised for the first time on appeal as a basis for reversal. See Westfield Ins. Co. v. Robinson Outdoors, Inc., 700 F.3d 1172, 1175-76 (8th Cir. 2012).